

**BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD
OF THE STATE OF CALIFORNIA**

AB-8679

File: 21-393802 Reg: 06063672

ASHRAF HIRJEE and HUSSAIN HASSAN ALI HIRJEE, dba Southbay Liquor & Market
1014 Wilmington Boulevard, Wilmington, CA 90744,
Appellants/Licensees

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: John W. Lewis

Appeals Board Hearing: August 7, 2008
Los Angeles, CA

ISSUED NOVEMBER 13, 2008

Ashraf Hirjee and Hussain Hassan Ali Hirjee, doing business as Southbay Liquor & Market (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which suspended their license for 15 days for their clerk selling an alcoholic beverage to a person under the age of 21, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellants Ashraf Hirjee and Hussain Hassan Ali Hirjee, appearing through their counsel, Ralph B. Saltsman, Stephen W. Solomon, and Michael Akopyan, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

¹The decision of the Department, dated December 21, 2006, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' off-sale general license was issued on November 18, 2002. On August 14, 2006, the Department filed an accusation against appellants charging that, on July 7, 2006, their clerk, Alvaro Bahena (the clerk), sold an alcoholic beverage to 19-year-old Carolina Gonzalez .

At the administrative hearing held on November 9, 2006, documentary evidence was received and testimony concerning the sale was presented by Gonzalez, Rosanna Navarro, and Department investigators Jonathon Rubio and Jeannine Peregrina.

Investigator Rubio observed Gonzalez and Navarro enter the premises, where Gonzalez selected an alcoholic beverage from the cooler, took it to the counter, and paid for it. The clerk did not ask her age or for identification. The investigators detained Gonzalez and Navarro outside the premises and determined that neither was carrying false identification. The clerk told Rubio that Gonzalez had shown some form of identification in the past showing she was 21, but he was not specific about what kind of identification she had used.

The Department's decision determined that the violation charged was proved and no defense was established. Appellants filed an appeal contending: (1) The Department engaged in prohibited ex parte communications, and (2) the decision fails to analyze the evidence.

DISCUSSION

The Department has filed a brief that states:

The Department does not concede any of the issues raised by the licensee [sic] in their opening brief. However, a review of the file indicates that the matter should be remanded to the Department for disposition pursuant to *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board (Quintanar)*.

Appellants have not objected to the Department's suggested action, and we have no reason to contradict the suggestion. Under the circumstances, we will remand this matter to the Department for further proceedings in light of *Quintanar*.

ORDER

The matter is remanded to the Department for an evidentiary hearing in accordance with the foregoing opinion.²

FRED ARMENDARIZ, CHAIRMAN
SOPHIE C. WONG, MEMBER
TINA FRANK, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

²This order of remand is filed in accordance with Business and Professions Code section 23085, and does not constitute a final order within the meaning of Business and Professions Code section 23089.